

Appreciation of Evidence

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What Is Evidence?

- A statement of disputed facts
- Admitted facts ?
- Submissions ??
- Statement of Law ???

What evidence not to be led

- Evidence of admitted facts (S. 58)
- Evidence of facts of which judicial notice is required (S. 57)

Types of Evidence

- Oral (S. 59 – 60)
- Documentary (S. 61) - Primary (S. 62 & 64)
 - Secondary (S. 63 & 65)

Kinds of Documents

- *Public (S. 74) Certified copies (S.76)*
- *Private (S. 75)*

Types of Documents

- Electronic (S. 65A & 65B)
- Attestable (S. 68 - 71)

Presumptions as to Documents

- Certified copies of public documents (S. 79)

Illustrations.....

Municipal records

Judicial records

Govt. printed Law books & court decisions

- Electronic records & signatures (S. 85B & 85C)
- Powers of Attorney
- Documents 30 years old
- Electronic records 5 years old

Exclusion of Evidence

- Exclusion of oral by documentary evidence (S. 91 – 92)

Burden of Proof

- Burden (S. 101)
 - who has ? (S. 102)
 - Facts within special knowledge (S. 106)
 - Owners in possession (S. 110)
 - Birth during marriage (S. 112)
- Onus

Types of Facts and Documents

- Relevant / Irrelevant
- Admissible / Inadmissible

Admissibility of Documents

- Direct evidence
 - Proof of contents of documents
 - Proof of signature
 - Receipt of letter
 - Chain of correspondence
- Secondary evidence
 - Copies of documents
 - Copies of copies of documents
 - Certified copies

Presumption of Facts

- Court to presume certain facts (S. 114)
 - Which facts ?
 - receipt of money / goods [S. 114(a)]
 - acceptance & endorsement of bill of exchange [S. 114(c)]
 - judicial & official acts [S. 114(e)]
 - course of business [S. 114(f)]
 - evidence not produced [S. 114(g)]
 - witness not answering [S. 114(h)]
 - document in possession of obliger [S. 114(i)]

Types of Evidence

- Examination-in-chief (S.137)
- Cross-Examination (S. 137)
- Re-examination (S. 137)
- Further cross-examination (S. 138)

Kinds of witnesses

- Witness to give evidence (S. 135)
- Witness to produce documents (S. 162)

Production of Documents

- Production of documents upon summons to witness (whether admissible or not) (S. 162)
- Document produced must be given in evidence if the party producing wants so. (S.163)
- Document refused to be produced cannot be used by such party without consent or order (S. 164)
- Court's power to order production (S. 165)

Order of Witnesses

- Parties
- Others

What evidence ?

- Relevant facts
 - duty to answer (S. 132 & 147)
- Reasonable grounds (S. 149 - 150)
- Contents of documents (S. 144)

What Cross-examination ?

- Previous statements (S. 145)
- Test the veracity (S. 146)
- Introduction (S. 146)
- Shake his credit (S. 146)
- Corroborative evidence (S. 156)
- Refreshing memory – by documents (S.159)
- Questions in confrontation [O7 r14(4), O8 r1A(4), O13 r 1(3)]

What not in Cross-examination ?

- Indecent and scandalous questions (S. 151)
 - Insulting and annoying questions (S. 152)
 - Irrelevant or inadmissible documents (O13 r3)
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- Court's power to put questions (S. 165)
 - Court's power to recall and examine witness (O 18 r17)

What evidence to appreciate ?

- Oral - Corroborative / contradictory*
- Documentary - Interpretation*
- Circumstantial*

Evidence to be read as a whole!